

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs January 24, 2006 at Knoxville

**GARY E. ALDRIDGE v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 3666 Steve Dozier, Judge**

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**No. M2005-01861-CCA-R3-HC - Filed April 28, 2006**

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On July 5, 2005, the petitioner, Gary Eugene Aldridge, filed a petition for a writ of habeas corpus in the Davidson County Criminal Court, attacking his 1997 Hickman County Criminal Court convictions of aggravated kidnapping, rape, two counts of aggravated rape, and two counts of assault. The petitioner's aggregate incarcerative sentence was 61½ years, 60 years of which must be served with no release eligibility date. The petition alleged that (1) the Hickman County sentencing proceedings violated his right to a jury determination of facts upon which sentencing enhancement was based, (2) the trial court's imposition of consecutive sentencing was cruel and unusual punishment, (3) his marriage to the victim precluded the prosecution for rape, (4) the trial court violated his right to avoid self-incrimination, and (5) an amendment to the indictment violated his right to grand jury adjudication. In response to the state's motion to dismiss the petition, the habeas corpus court, on July 12, 2005, entered a thorough order dismissing the petition without an evidentiary hearing. The petitioner now appeals. We affirm the action of the habeas corpus court.

**Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JOSEPH M. TIPTON, J., joined.

Gary E. Aldridge, Appellant, Pro Se.

Paul G. Summers, Attorney General & Reporter; Brent C. Cherry, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

In Tennessee, the method of pursuing the right to a writ of habeas corpus is controlled by statute. *See* Tenn. Code Ann. §§ 29-21-101 through 130 (2003). The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Archer v. State*, 851 S.W.2d 157, 165 (Tenn. 1993). One such requirement is that the petition must state that the petition

is the “first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons given for the failure to do so.” Tenn. Code Ann. § 29-21-107(b)(4) (2003).

The legal issues raised in a habeas corpus proceeding are questions of law, and our review of questions of law is de novo. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Habeas corpus relief is available only when the aggrieved party’s conviction is void or the sentence has expired. *See Archer*, 851 S.W.2d at 164. A petition seeking issuance of a writ of habeas corpus may be summarily dismissed by a trial court if it fails to indicate that the petitioner’s conviction is void. Tenn. Code Ann. § 29-21-109 (2003).

The petitioner in the present case makes no allegation that his sentence has expired; he claims that his convictions and sentences are void. A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer*, 851 S.W.2d at 164; *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in this case the trial court apparently had jurisdiction over the actus reus, the subject matter, and the person of the petitioner, the petitioner’s jurisdictional issue is limited to the claim that the court was without authority to enter the judgment. *See Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The invalidity of the sentence itself, as well as the broader invalidity of the conviction, results in a void judgment and is a sufficient basis for habeas corpus relief. *See Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (stating that a void sentence, as well as a void conviction, may result in a void judgment and be the subject of a habeas corpus proceeding). In *McLaney v. Bell*, 59 S.W.3d 90 (Tenn. 2001), our supreme court said that an “illegal” sentence equates to a “jurisdictional defect.” *McLaney*, 59 S.W.3d at 92.

The petitioner previously filed a petition for writ of habeas corpus, as evidenced by this court’s opinion upon the petitioner’s direct appeal from the dismissal of that previous petition. *See Gary E. Aldridge v. State*, No. M2003-00703-CCA-R3-HC (Tenn. Crim. App., Nashville, Oct. 19, 2004). Yet, the petitioner did not produce with his petition a copy of the previous petition and proceedings, as required by Tennessee Code Annotated section 29-21-107(b)(4). This failure to follow the mandatory requirements of the statute alone justifies the habeas corpus court’s dismissal of the petition.

Notwithstanding the petitioner’s fatal procedural default, we readily recognize that none of his claims would merit relief anyway.

The petitioner’s first two issues address constitutional concerns: the right to a jury determination of facts leading to sentence enhancement and consecutive sentencing and whether the

imposition of consecutive sentences equated to cruel and unusual punishment. Tennessee's judge-sentencing scheme has been held to comply with the Sixth Amendment's guarantee of the right to trial by jury, *see State v. Gomez*, 163 S.W.3d 632 (Tenn. 2005) (holding that judge sentencing did not equate to plain error, despite the jury-trial deprivation adjudicated in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004)), and in any event, the claim of a jury-trial deprivation in the petitioner's sentencing bespeaks a voidable judgment, not one that implicates a void judgment and, thus, habeas corpus relief. *Francis L. Sanschargin v. State*, No. M2005-00304-CCA-R3-HC, slip op. at 2 (Tenn. Crim. App., Nashville, Aug. 11, 2005) ("This Court has previously determined that even if a *Blakely* violation occurred at the time of sentencing, such a violation would render the judgment voidable, and not void, unless the face of the record established that the trial court did not have jurisdiction to sentence the petitioner.").

Additionally, in the petitioner's direct appeal of his convictions, this court, in response to the petitioner's claim that consecutive sentencing yielded a "grossly disproportionate" sentence, said, "[A]n effective sixty year sentence is not grossly disproportionate to the crimes for which [the petitioner] has been convicted so as to constitute cruel and unusual punishment under the Eighth Amendment . . . or Article I, Section 16 of the Tennessee Constitution." *State v. Gary Eugene Aldridge*, No. 01C01-9802-CC-00075, slip op. at 13 n.12 (Tenn. Crim. App., Nashville, Aug. 19, 1999), *perm. app. denied* (Tenn. 2000). Accordingly, the issue has been adjudicated and forms no basis for habeas corpus relief. *See Randy D. Hurley v. State*, No. E2004-00381-CCA-R3-HC (Tenn. Crim. App., Knoxville, July 12, 2004) (affirming summary dismissal of habeas corpus petition that claimed, *inter alia*, cruel and unusual punishment and agreeing that judgments were not void), *perm. app. denied* (Tenn. 2004).

Also, in *Gary Eugene Aldridge*, this court determined that the statutory spousal exclusion from rape prosecution did not apply in the petitioner's case. *See Gary Eugene Aldridge*, slip op. at 10-12. At the time of the conviction offenses, Tennessee Code Annotated section 39-13-507 provided for a limited spousal exclusion from the proscription of rape. *See Tenn. Code Ann. § 39-13-507* (2003) (repealed by 2005 Pub. Acts, ch. 456 (effective June 18, 2005)). By the terms of the statute then in force, one could not be convicted of rape of a spouse unless the accused utilized a deadly weapon or facsimile thereof, caused serious bodily injury to the victim, or the spouses were living apart and one of them had filed for separate maintenance or divorce. *Id.* § 39-13-507(a), (b). In *Gary Eugene Aldridge*, this court found as "undisputed" that "the victim and the [petitioner] had been living apart . . . and that the victim had filed for divorce . . ." *Gary Eugene Aldridge*, slip op. at 9. Accordingly, the issue has been adjudicated adversely to the petitioner and forms no basis for habeas corpus relief.

The petitioner also claims pursuant to *State v. Momon*, 18 S.W.3d 152 (Tenn. 1999), that he was denied his right to testify in his trial. In 1999, *Momon* directed trial courts to place on the record a defendant's knowing, voluntary, and intelligent waiver of his or her right to testify. *Id.* at 162. The *Momon* court said, however, that "neither the right to testify . . . , nor the procedural protections adopted to preserve that right are new constitutional rules which must be retroactively applied." *Id.* at 162-63. The petitioner's trial occurred before *Momon* was filed. Furthermore, we

note that, in the petitioner's appeal of the denial of post-conviction relief, this court said, "Although there is no record of the petitioner waiving his right to testify, trial counsel testified at the [post-conviction] evidentiary hearing that the petitioner personally and knowingly waived this right upon the advice of counsel, and the post-conviction court accredited counsel's testimony." *Gary Eugene Aldridge v. State*, No. M2001-02452-CCA-R3-PC, slip op. at 5 (Tenn. Crim. App., Nashville, Nov. 19, 2002). Thus, the claim has been adjudicated adversely to the petitioner and forms no basis for relief. Additionally, the claim is not justiciable in a habeas corpus proceeding. *See George G. Faulkner v. State*, No. E2004-00387-CCA-R3-HC, slip op. at 2 (Tenn. Crim. App., Knoxville, Sept. 24, 2004) ("The essence of the petitioner's claim is that his attorneys violated his Fifth Amendment right to testify in his own defense. This claim is not cognizable in a habeas corpus proceeding."), *perm. app. denied* (Tenn. 2005).

In his last issue, the petitioner claims that the trial court erred in allowing the state to amend charges of spousal rape to charges of aggravated rape. However, "[i]f the indictment was not properly amended, . . . the judgment [would be] voidable and not void on its face." *Donald Walton v. State*, No. M2002-02044-CCA-R3-CO, slip op. at 2 (Tenn. Crim. App., Nashville, Jan. 28, 2004), *perm. app. denied* (Tenn. 2004). Thus, such a claim provides no basis for habeas corpus relief. *Id.*

Because the record and the applicable law support the summary dismissal of the petition for habeas corpus relief, we affirm the criminal court's order.

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JAMES CURWOOD WITT, JR., JUDGE